00-175

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Review 2000	)	FCC 00-346

To: The Commission

BIENNIAL REVIEW 2000 COMMENTS OF ALLOY LLC

Joaquin R. Carbonell
Carol L. Tacker
1100 Peachtree Street, N.E., Suite 1000
Atlanta, GA 30309-4599
(404) 249-0813

Its Attorneys

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SUMMARY

Alloy LLC supports Commission efforts to initiate proceedings as part of the Biennial Review 2000 to eliminate or modify those regulations that are no longer necessary in the public interest given the current competitive landscape of the wireless telecommunications market. Consistent with Section 11 of the Communications Act and 202(h) of the Telecommunications Act of 1996, however, the analytical framework employed by the Commission in making any assessments to retain a rule necessitates a more exacting review of the state of competition than that set forth in the Staff Report. Viewed from this perspective, Alloy suggests the following:

- ***International Reporting Requirements*** — A proceeding should be initiated to review and eliminate reporting requirements of domestic CMRS providers that are offering international calling to their subscribers.

- ***Detariffing International Services*** — Alloy supports the elimination of the tariffing requirement for CMRS carriers and U.S. carriers classified as dominant solely because of foreign affiliations.

- ***Cellular Analog Service Requirement*** — The FCC should look at elimination of the requirement that all cellular carriers offer analog service.

- ***License Renewal Procedures*** — License renewal terms should be extended beyond 10 years, and the FCC should harmonize the cellular and PCS rules concerning renewal.

- ***CMRS Spectrum Cap*** — The spectrum cap should be eliminated. The competitive landscape and technological developments warrant its termination.

- ***Synchronization of FCC/FAA Regulations*** — Disparities in rule interpretation among the varying FAA regional offices and the FCC must be synchronized.

- ***FCC ULS Efficiencies*** — Alloy supports the efforts of the FCC's ULS task force to work towards increased efficiencies in ULS' speed and quality of processing/reporting.

- ***Reevaluating FCC Quiet Zone Rules*** — Current FCC Quiet Zone rules are burdensome and can be improved to address speed of service issues that will be in the public's best interest.

- ***Reevaluating Cellular/PCS Rules for Regulatory Parity*** — The cellular rules should be reevaluated against the PCS rules to eliminate any remaining disparities, consistent with the goals of regulatory parity.

- ***Improving Environmental (NEPA) Clearance Procedures*** — Alloy supports efforts to streamline environmental tower clearance procedures under the National Environmental Policy Act.

- ***Informal Complaints*** — The FCC should revise its rules governing informal complaints to specify documentation to be submitted with informal complaints.

- ***Standardized SAR Measurement Procedures*** — The FCC should facilitate the development of standardized SAR measurement techniques through its support of one of the standard setting bodies.

- **Dual Mode Phones** — Any initiative to clarify whether dual mode products approved in the United States must comply with other applicable international standards should be done pursuant to a notice of proposed rulemaking.

- ***Resale and Roaming*** — The FCC should initiate a proceeding to revisit the need for both rules given the current competitive landscape.

- ***Geographic Rate Averaging and Rate Integration*** — The recent decision of the D.C. Circuit that Section 254(g) does not mandate application of rate integration to CMRS carriers is correct. There is no need to start a proceeding looking into this issue.

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BIENNIAL REVIEW 2000 COMMENTS OF ALLOY LLC

Alloy LLC ("Alloy"), by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Biennial Regulatory Review 2000 Staff Report (Sept. 19, 2000) ("Staff Report"). *See Public Notice*, FCC 00-346 (Sept. 19, 2000) (*Public Notice*).[1] Alloy is the new joint venture between the domestic wireless operations of SBC Communications, Inc. ("SBC") and BellSouth Corporation ("BellSouth"), and provides wireless voice and data Commercial Mobile Radio Services ("CMRS") to more than 19 million customers in 38 states, the District of Columbia and two U.S. territories. Consistent with the goals of the biennial review, Alloy supports the initiation of proceedings, as discussed herein, to eliminate or modify those regulations that are no longer necessary in the public interest given the current competitive landscape of the wireless telecommunications market.

[1]As required by the *Public Notice*, these comments include headings that correspond directly to the headings in the Staff Report, and each heading begins on a new page.

II.A. LEGAL AUTHORITY

The Staff Report indicates that the report and analysis are steps in the process of conducting biennial regulatory reviews, in accordance with Section 11 of the Communications Act, 47 U.S.C. § 161, and Section 202(h) of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56 (1996). As applicable to a provider of telecommunications service, including CMRS, Section 11 requires that the FCC determine whether its regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[2] Despite this directive, however, the analytical framework applied by the staff in determining whether to recommend modification or revocation of Commission rules does not reflect the requirements in Section 11.

Specifically, although the staff has considered a rule's purpose and its advantages and disadvantages in determining whether to recommend modification or revocation, *see* Staff Report at ¶ 12, it has not provided a detailed analysis as to whether the competitive landscape has made continued retention of a particular rule contrary to the public interest. While the framework applied in the Staff Report is certainly a useful starting point, any formal proposal or determination by the FCC that a rule may still be necessary in the public interest must ultimately be accompanied by more than broad generalities concerning the status of competition. Indeed, the Wireless Bureau appears to recognize this in its discussion of the CMRS spectrum cap, when it states that an ensuing Notice of Proposed Rulemaking ("NPRM") will take into account "existing competitive conditions . . . that could affect the continued need for the cap." *Id.* at ¶ 106. Section 11 requires the Commission to do the same as it analyzes whether to retain other rules as well.

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[2] 47 U.S.C. § 161(a)(2).

IV.B.3 INTERNATIONAL BUREAU; NEW INITIATIVES

- ***Reporting Requirements***

Alloy supports the elimination of the reporting requirements of carriers owned by foreign entities. *See* Staff Report at ¶¶ 83-84. Competition in the international marketplace and U.S. WTO obligations have obviated the need for such reports. The Commission should also initiate a proceeding to review and eliminate Section 43.61 reporting requirements, 47 C.F.R. § 43.61, for domestic CMRS providers that offer international calling to their subscribers solely by reselling the international services of switched resellers. A comprehensive review of the data submitted in the reports is likely to indicate that such traffic measured on a revenue, minutes-of-use or circuit basis is minuscule in comparison to the bulk of international traffic provided by the facilities-based and wireline-based resale international carriers. At minimum, Alloy agrees that a re-write of the 47 C.F.R. §§ 43.61 and 43.82 instruction manuals is required, both for clarity and to more accurately reflect recent rule changes.

- ***Detariffing International Services***

Alloy supports elimination of tariffing requirements for carriers offering nondominant international services — particularly if the Section 43.61 reporting requirement is otherwise retained. Staff Report at ¶¶ 86-87. Elimination of such tariffing requirements is particularly warranted for CMRS carriers, as well as for U.S carriers classified as dominant solely because of foreign affiliations as opposed to actual market power. As part of such rule changes, elimination of 47 C.F.R. § 20.15(d), is also warranted. This rule imposes route-specific tariffing requirements on certain wireless carriers, even when they are regulated as nondominant and provide only pure resale services. These requirements impose significant burdens with no corresponding public interest benefit, and Alloy agrees that the proposed rule changes will not adversely impact competition.

IV.C.3 WIRELESS TELECOMMUNICATIONS BUREAU; NEW INITIATIVES

- ***Part 22 Cellular Rules***

The Commission should initiate a rulemaking to address the obsolete technical requirements for the provision of analog cellular service. *See* Staff Report at ¶ 103; *id.*, Appendix IV at 50. Especially in larger cellular markets where spectrum congestion is most serious, the requirement to provide analog service — particularly for roamers — has become a barrier to the efficient use of spectrum, as the gains realized from cell splitting and other techniques have reached their limits. In a recent address, Chairman Kennard recognized that spectrum scarcity is a major challenge facing carriers, and therefore sought ways to manage spectrum more efficiently.[3] One solution is to enable cellular carriers to convert from analog to digital technology, which provides greater capacity and the ability to offer advanced services to subscribers, by eliminating the analog service requirement.

- ***License Renewal Procedures***

Alloy supports initiating a proceeding to review renewal procedures for wireless carriers. The present renewal process places significant time and resource burdens on wireless licensees. The 10-year frequency with which this process must currently be repeated cannot be justified given the fact that renewal has proved to be "virtually automatic," *see* Staff Report at ¶ 104. The Commission should, therefore, extend renewal terms beyond 10 years. Consistent with the tenets of regulatory parity, the Commission should harmonize the renewal requirements for PCS licensees with those of cellular licensees.[4]

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[3] *See News Release*, "Chairman Kennard Tells Private Wireless Industry Group Spectrum Scarcity Will Be Greatest Challenge" (rel. Oct. 5, 2000).

[4] *See* Cellular Telecommunications Industry Association, Petition for Rulemaking to Extend the Part 22 Cellular Renewal Rules to the Part 24 Personal Communications Service (filed Dec. 21, 1999).

- ***CMRS Spectrum Cap Review***

As part of 1998 Biennial Review, BellSouth and SBC, among others, argued strongly that the Commission should eliminate the 45 MHz CMRS spectrum cap because the development of meaningful competition and lower prices have satisfied the cap's purpose and justify its elimination under Section 11 of the Communications Act. Since that time, prices have dropped by an estimated 20 percent due to growing competition in the marketplace, and more than two-thirds of the population now has a choice among five or more broadband CMRS providers.[5] There are also three or more competing broadband CMRS providers in markets covering *nearly 90 percent* of the nation's population.[6] Moreover, between December 1998 and December 1999, wireless subscribership increased 24.3 percent from 69 million to more than 86 million.[7] As a result, meaningful competition has arrived, fully justifying the rule's elimination under Section 11.[8]

Moreover, the public demand for mobile services has heightened the need for carriers to have access to additional spectrum. Although the Commission has stated that it has been "moving to provide spectrum to satisfy this increased demand,"[9] its recent decision to continue to apply the spectrum cap to the C and F Block PCS spectrum scheduled for reauction may preclude carriers from adding spectrum in some of the congested markets where they need it most, and where consumer demand is the greatest. Access to additional spectrum is also necessary to fully deploy the new third-

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[5]*Fifth Annual Report and Analysis of Market Conditions with Respect to Competitive Mobile Services*, FCC 00-289, at 4-6 (rel. Aug. 18, 2000) (*Fifth Annual Competition Report*).

[6]*See id.* at 6.

[7]*See* CTIA's Semi-Annual Wireless Industry Survey (Dec. 1999), *available at* <http://www.wow-com.com/wirelesssurvey/1299datasurvey.pdf>.

[8]*See, e.g.*, Statement of Commissioner Powell, *1998 Biennial Regulatory Review*, 15 F.C.C.R. 9219, 9296 (1999) ("I cannot imagine any other industry segment that can better laud their state of economic competition as 'meaningful.'").

[9]*Fifth Annual Competition Report* at 26.

generation ("3G") mobile services consumers are increasingly demanding. Therefore, the Commission should promptly initiate a proceeding to eliminate the spectrum cap. *See* Staff Report at ¶ 106; *id.*, Appendix IV at 22-23.[10]

[10]Such a result is also consistent with the Commission's decision not to apply the cap to the Part 27 services. *See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27, First Report and Order*, FCC 00-5, at ¶¶ 51-53 (Jan. 7, 2000); *Establishment of Part 27, the Wireless Communications Service, Report and Order*, 12 F.C.C.R. 10785, 10832 (1997).

IV.C.4 WIRELESS TELECOMMUNICATIONS BUREAU; OTHER ISSUES

The Staff Report indicates that the Wireless Bureau is also considering other possible areas for new Biennial Review initiatives. *See* Staff Report at ¶107. Alloy asks the Commission to augment that list to include the following:

- ***Synchronization of FAA/FCC Regulations***

Currently, there are numerous disparities in rule interpretation among the varying FAA regions and the FCC. The FCC is charged with enforcing the FAA's regulations. Accordingly, the FCC should undertake discussions with the FAA to reconcile these differences. *See, e.g.*, Staff Report, Appendix IV at 21 (noting inconsistencies between FCC/FAA tower procedures). For example, the general requirements in the FAA's Advisory Circulars are made mandatory by Section 17.23 of the FCC's rules, 47 C.F.R. § 17.23. While these circulars call for notification to the applicable FAA regional office to use voluntary marking and lighting, the FAA regional processors tell carriers *not* to do so unless lighting is discontinued. Alloy urges the FCC to work with the FAA to revise its Circulars to conform to FAA policy so as not to create an inherent conflict for wireless carriers trying to abide by Section 17.23. In addition, Alloy recommends that the FCC work with the FAA to adopt the FCC's long-standing interpretation of the 20-foot rule exception to the FAA notification requirement, 47 C.F.R. § 17.14(b).[11]

- ***Expanding ULS Efficiencies***

Representatives of Alloy are currently on the FCC's Universal Licensing System ("ULS") task force working towards increased efficiencies in ULS' speed and quality of processing/reporting. ULS should be a source of quality and easily accessible data for all of the carriers publicly filed

[11] *See also* WTB, Fact Sheet No. 15, Antenna Structure Registration, at 3-5 (May 1996).

application data. Alloy recommends the implementation of its suggestions made to the FCC task force staff on August 17, 2000.[12]

- ***Reevaluating Quiet Zone Rules***

The current FCC Quiet Zone rules, 47 C.F.R. §§ 1.924(d), 101.31(b)(v), add an excessive interval to the process of obtaining approval for wireless facilities within the vicinity of an FCC Quiet Zone. For example, the Puerto Rican properties held by Alloy subsidiaries fall completely within the quiet zone dictated by the Arecibo Observatory. Currently, the Observatory is often willing to provide written approval for wireless modifications, but the FCC's rules delay final approval. These rules are burdensome and can be improved to address speed of service issues that will be in the public interest.

- ***Reevaluating Cellular/PCS Rules for Regulatory Parity***

Although the cellular and PCS services are highly competitive and offer similar services, cellular licensees are still bound by rules not applicable to PCS carriers, contrary to the tenets of regulatory parity. In particular, the PCS rules do not require site-specific licensing, while cellular providers are still encumbered by the requirement to file applications for "external" cell sites whenever a change is made in the cellular geographic service area ("CGSA"). Such applications require the provision of detailed technical information and have no counterpart in the PCS service. The Commission should use the Biennial Review proceeding to examine the continued need for these and other lopsided PCS/cellular regulations given the current competitive landscape.

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[12]Those suggestions include enabling ULS to: (1) provide broad-based summary reporting, *e.g.*, cellular/PCS/microwave call signs reports by licensee, market area, city or state, service type, *etc.*; (2) search licenses by market number; (3) reflect partitioning information for cellular licenses; (4) accept a negative elevation angle number for microwave applications (currently, licensees are advised to enter zero and provide an attachment, which is burdensome); and (4) allow users to view microwave licenses on-line exactly the way the official license looks (currently, users must click through multiple screens to obtain various pieces of this information).

- ***Improving Environmental (NEPA) Clearance Procedures***

Alloy supports the efforts of the Wireless Bureau to streamline its environmental tower clearance procedures under the National Environmental Policy Act ("NEPA"). *See* Staff Report at ¶107; *id.*, Appendix IV at 8-10. BellSouth has previously urged the Commission to take such action in the ULS docket,[13] and CTIA and PCIA have been urging streamlining in this area for some time. For example, Alloy supports efforts to clarify that FCC approval for facilities located in floodplains is not required when the carrier has obtained local approval pursuant to federal (National Flood Insurance Program) guidelines. Alloy also supports efforts by the FCC, state historic preservation officers ("SHPOs") and the Advisory Council on Historic Preservation to develop a programmatic agreement to streamline historic compliance requirements. *See* Staff Report, Appendix IV at 9. Such an agreement must specify that co-locations or antenna changeouts on existing non-historic structures are excluded from environmental processing. Finally, Alloy supports interagency coordination efforts to expedite agency responses to licensee inquiries for environmental approvals. Carriers are facing increasing delays in receiving responses from SHPOs in particular, as well as the Fish and Wildlife Service.

[13] *See* Comments of BellSouth Corporation in CC Docket No. 98-20 at 19-24 (filed May 22, 1998).

VI.B.2 CONSUMER INFORMATION BUREAU; NEW INITIATIVES

The Commission should initiate a proceeding to augment the Commission's informal complaint rules. *See* Staff Report at ¶ 162. In particular, consumers should be required to file complete informal complaints with documentation that substantiates a cause of action.[14] The lack of formal guidelines concerning the documentation to be submitted has meant that carriers and FCC staff have had to spend unnecessary time trying to ascertain the exact nature of the informal complaint. If consumers are informed as to what supporting documentation is required, it will be easier for the carrier to be identified in the first instance and for that carrier to formulate a response. Likewise, if a subscriber fails to submit the requisite information, the Commission will be able to summarily dispose of the informal complaint, conserving the expenditure of unnecessary time and resources by FCC staff and the carrier.

[14]For example, subscribers often fail to review their contracts prior to submitting a complaint to determine if their concern is justified. In many cases, the contract addresses the concern. By requiring subscribers to submit sufficient documentation with their complaint, the Commission can more readily determine if it has jurisdiction and the complaint merits a response, or if, for example, the matter is a private contractual dispute not properly before the agency.

VI.E.2 OFFICE OF ENGINEERING AND TECHNOLOGY; NEW INITIATIVES

Alloy agrees that the FCC should help to *facilitate* the development of standardized Specific Absorption Rate ("SAR") measurement techniques. Staff Report at ¶ 189. Rather than undertaking a formal rulemaking proceeding, however, the FCC should look to one of the industry standard-setting bodies to carry out this effort, with the FCC's support.

Alloy disagrees, however, with any suggestion that the question of whether dual mode products that are approved for sale in the U.S. are also compliant with applicable international standards can be resolved without the benefit of notice and comment. *See* Staff Report at ¶ 191. The initiative should be done pursuant to an NPRM. The issue is becoming particularly important as 3G products are being developed. Given the current lack of harmonization between U.S. spectrum bands identified for 3G use and those being allocated abroad,[15] 3G products may be required to operate on certain bands in the U.S. and different bands in other countries. Thus, resolution of U.S. and international compliance issues for dual mode products deserves careful attention.

[15] *See* Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Implementation of WRC-2000: Review of Spectrum and Regulatory Requirements for IMT-2000, RM-9920 (filed July 12, 2000).

APPENDIX IV: PART 20, SECTION 20.12 — RESALE AND ROAMING

The FCC adopted the resale rule "as a means to achieve competition."[16] *See* Staff Report, Appendix IV at 27. Although the resale rule is set to expire on November 24, 2002, staff has recommended that the Commission continue to evaluate the resale rule in light of the competitive conditions, *see id.* at 28, and Alloy urges the Commission to do so now.

As discussed above, the CMRS marketplace is extremely competitive, and a detailed assessment of the competitive landscape by the Commission will likely demonstrate that meaningful competition has arrived, thus fully satisfying the rule's purpose and justifying its elimination or expedited sunset under Section 11. Conversely, continued retention of the rule is contrary to the public interest because it imposes both administrative costs (*e.g.*, negotiating resale agreements and resolving disputes and litigation) and technical costs (*e.g.*, billing) — costs that are ultimately passed on to consumers. In sum, the Commission should commence a proceeding to examine whether the sunset for the resale rule can be accelerated, or the rule eliminated outright at this time, based on current market conditions.

Like the resale rule, an important underpinning of the Commission's manual roaming provision is the protection of competition. *See, e.g., id.*, Appendix IV at 29. The rapid expansion of the CMRS market and the concurrent growth in competition since the rule was adopted in 1996 justify the initiation of a new rulemaking proceeding to examine whether to eliminate or sunset the rule. The Commission may also need to consider the roaming rule as part of its effort to evaluate whether there is an ongoing need for cellular providers to continue to set aside spectrum for analog service.[17]

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[16] *Cellnet Communications, Inc.* v. FCC, 149 F.3d 429, 441 (6th Cir. 1998).

[17] *See supra* text at 4.

APPENDIX IV: PART 64, SUBPART R — RATE AVERAGING/INTEGRATION

The U.S. Court of Appeals for the D.C. Circuit recently vacated the Commission's decision that Section 254(g) unambiguously applies rate integration to CMRS carriers, finding no such mandate in the statute.[18] As a result of the vacation, CMRS carriers are currently not required by the Commission to integrate their rates.[19] This is the correct result, and there is no need for the Commission to revisit this issue; the need for a rate integration rule simply does not apply in the highly competitive wireless environment.

In fact, the application of rate integration to CMRS providers could ultimately harm the public interest. By requiring CMRS carriers to average their rates across all of their service areas, rate integration creates implicit subsidies from low-cost areas to high-cost areas. Moreover, causing CMRS carriers to integrate rates across affiliates might require carriers that are partners in one market to be obligated to coordinate prices in other markets where they compete, leading to anticompetitive results. Indeed, the application of the Commission's policies to the intertwined ownership structure of the CMRS industry would appear to require nationwide coordinated pricing or even price-fixing among competitors.

These anticompetitive effects are avoided by maintaining the *status quo* (particularly in the absence of any harm requiring redress) and avoiding a Biennial Review proceeding, while at the same time monitoring the state of competition in the market, as the staff appears to suggest. *See, e.g.*, Staff Report, Appendix IV at 128. Following this approach will also allow the FCC to avoid

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[18] *GTE Service Corp. v. FCC*, No. 97-1538 (D.C. Cir. July 14, 2000).

[19] *Policy and Rules Concerning the Interstate Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, *Memorandum Opinion and Order*, FCC 00-308, at ¶ 6 (rel. Aug. 23, 2000) ("The Court of Appeals' decision . . . vacated our order applying the rate integration rule to CMRS carriers. Thus, there is currently no rate integration rule to apply to CMRS carriers . . . .").

having to resolve how to address wide-area calling plans, services offered by affiliates, and plans that assess local air time or roaming charges in addition to separate long-distance charges for interstate, interexchange services, as well as whether cellular and PCS service rates should be integrated. In light of the action by the D.C. Circuit, the FCC should terminate its pending rulemaking examining these issues as moot.[20]

[20] *Policy and Rules Concerning the Interstate Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, *Further Notice of Proposed Rulemaking*, 14 F.C.C.R. 6994 (1999).

CONCLUSION

For the foregoing reasons, the Commission should initiate the proceedings discussed herein to eliminate or modify those regulations that are no longer necessary in the public interest given the current competitive landscape of the wireless telecommunications market.

Respectfully submitted,

ALLOY LLC

By: 

Joaquin R. Carbonell
Carol L. Tacker
1100 Peachtree Street, N.E., Suite 1000
Atlanta, GA 30309-4599
(404) 249-0813

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